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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

HANEE AMEEN,

Defendant and Appellant.

D074014

(Super. Ct. No. SCE364607)

APPEAL from a judgment of the Superior Court of San Diego County, Daniel G. Lamborn, Judge. Affirmed, with directions.

John E. Edwards, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Lynne G. McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.



Hanee Ameen pleaded guilty to one count of assault with a deadly weapon on a peace officer (Pen. Code, § 245, subd. (c)), and admitted he personally used a deadly weapon in the commission of the offense (Pen. Code, § 1192.7, subd. (c)(11)).<sup>1</sup> The trial court placed him on probation for three years, subject to the conditions (among others) that he (1) obtain his probation officer's approval of his residence and employment, (2) have no "negative contact" with law enforcement, and (3) submit to warrantless searches of his person, home, and property (including his electronic devices). Ameen did not object to these conditions at sentencing.

On appeal, Ameen challenges these probation conditions on a variety of legal grounds. However, by failing to object at sentencing, Ameen forfeited these challenges, with the exception of his purely legal facial challenge to the condition prohibiting "negative contact" with law enforcement. As to this condition, we remand with directions that the trial court clarify what constitutes "negative contact."

In all other respects, we affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

### *The Offense*<sup>2</sup>

After an officer-involved shooting in El Cajon, more than 200 people gathered to protest the police. The protest became progressively more violent, with protesters

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<sup>1</sup> Further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> Because Ameen pleaded guilty before trial, we base our summary of the offense on the probation officer's report.



blocking traffic, yelling at police, and throwing bottles and rocks at them. The police declared the situation "an unlawful assembly."

Around 11:00 p.m., law enforcement surveillance team members observed a group of six adult males throwing rocks and objects at uniformed police officers. Ameen " 'stood out' " as the " 'most active' " participant. He repeatedly threw baseball-sized rocks and pieces of concrete, "swinging his arms in circles as though he was 'loosening up,' " like "a baseball pitcher prior to throwing a pitch." One projectile struck a police officer in the temple area of his helmet. Were it not for the helmet, the projectile could have caused serious bodily injury or death.

As police pursued Ameen, he threw rocks at their marked patrol cars. For officer safety, police surveilled Ameen until circumstances allowed them to safely arrest him.

Ameen initially denied participating in the protest, but he eventually admitted throwing rocks and pieces of concrete at the police. Ameen acknowledged he had seen posts on social media and videos on YouTube "encourag[ing] people to teach police a les[s]on" in the wake of the officer-involved shooting.

### *The Guilty Plea*

The prosecution charged Ameen with a single count of assault with a deadly weapon on a peace officer (§ 245, subd. (c)), and alleged he personally used a deadly



weapon in the commission of the offense, within the meaning of section 1192.7, subdivisions (c)(11) and (c)(23).<sup>3</sup>

After initially pleading not guilty, Ameen entered into a plea bargain under which he pleaded guilty to the assault count and admitted the deadly weapon allegation under section 1192.7, subdivision (c)(11). In exchange, the prosecution agreed to dismiss the deadly weapon allegation under section 1192.7, subdivision (c)(23), and to not oppose Ameen serving any sentence in local custody. On the guilty plea form, Ameen initialed a box acknowledging he faced a maximum exposure of five years in prison or on probation.

The trial court found Ameen's guilty plea to be knowing, intelligent, and voluntary.

#### *The Motion to Withdraw Guilty Plea*

About five months after entering his guilty plea, Ameen moved to withdraw it. He argued he "was not informed of the consequences of pleading guilty, including" that (1) he would be subject to warrantless searches of his home, which he "ha[d] an issue with because [he] live[d] with two elderly parents"; (2) he would be subject to travel restrictions, which could impact his work as an overseas military contractor; and (3) his probation officer told him he would be on probation for three years, whereas his attorney had advised him it would be only two years.

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<sup>3</sup> Section 1192.7, subdivision (c) defines the term " 'serious felony' " to include "(11) assault with a deadly weapon or instrument on a peace officer" and "(23) any felony in which the defendant personally used a dangerous or deadly weapon."



The trial court denied Ameen's motion, finding his grievances were "collateral to the change of plea." Ameen does not challenge this ruling on appeal.

### *Sentencing*

The probation officer's report noted that despite Ameen's clean criminal record, he was presumptively ineligible for probation based on his use of a deadly weapon. Nevertheless, based on the parties' sentencing negotiations, the probation officer recommended that Ameen be placed on three years' formal probation, subject to serving 365 days in custody, with "[s]tandard" and "[a]dditional" probation conditions.

At the sentencing hearing, Ameen acknowledged he "reviewed all of the proposed [probation] terms and conditions with [his] attorney," and agreed to "accept probation on these terms and conditions."

The court then placed Ameen on probation for three years, subject to serving 150 days in local custody and the following conditions (among others):

- "Submit person, vehicle, residence, property, personal effects, computers, and recordable media . . . to search at any time with or without a warrant, and with or without reasonable cause, when required by [probation officer] or law enforcement officer."
- "Obtain [probation officer] approval as to . . . residence [and] employment."
- "No negative contact w[ith] law enforcement."

Ameen appeals these conditions.

### DISCUSSION

Ameen contends the challenged probation conditions are unreasonable and/or unconstitutionally vague or overbroad. We conclude Ameen forfeited his right to



challenge these conditions by failing to object to them at sentencing. We further conclude the exception to the forfeiture rule for purely facial constitutional challenges applies only to Ameen's vagueness challenge to the condition prohibiting negative contact with law enforcement.

### I. *Relevant Legal Principles*

"When an offender chooses probation, thereby avoiding incarceration, state law authorizes the sentencing court to impose conditions on such release that are 'fitting and proper to the end that justice may be done . . . .' " (*People v. Moran* (2016) 1 Cal.5th 398, 402-403, quoting § 1203.1, subd. (j).) "[A] sentencing court has 'broad discretion to impose conditions to foster rehabilitation and to protect public safety . . . .' " (*Moran*, at p. 403.) " 'If the defendant finds the conditions of probation more onerous than the sentence he would otherwise face, he may refuse probation' [citation] and simply 'choose to serve the sentence' [citation]." (*Ibid.*)

"The trial court's discretion [to impose probation conditions], although broad, nevertheless is not without limits . . . ." (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) Under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*), " '[a] condition of probation will not be held invalid unless it "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . ." [Citation.]' " (*People v. Olguin* (2008) 45 Cal.4th 375, 379, quoting *Lent*, at p. 486.)

"This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*Olguin*, at p. 379.)



In addition to withstanding a reasonableness analysis under *Lent*, probation conditions must also withstand constitutional analysis. (*In re Sheena K.* (2007) 40 Cal.4th 875, 890 (*Sheena K.*); see *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346.) " 'A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.' [Citation.] 'The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.' " (*Pirali*, at p. 1346.)

Similarly, "[a] probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,' if it is to withstand a challenge on the ground of vagueness." (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) "A probation condition is not impermissibly vague ' " 'simply because there may be difficulty in determining whether some marginal or hypothetical act is covered by its language.' " " " (*In re I.V.* (2017) 11 Cal.App.5th 249, 261.) We give the condition " 'the meaning that would appear to a reasonable, objective reader.' " (*Olguin*, *supra*, 45 Cal.4th at p. 382.)

"As a general rule, failure to challenge a probation condition on constitutional or *Lent* grounds in the trial court waives the claim on appeal." (*In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033; see *People v. Welch* (1993) 5 Cal.4th 228, 237; *Sheena K.*, *supra*, 40 Cal.4th at p. 885.) " 'The purpose of this rule is to encourage parties to bring



errors to the attention of the trial court, so that they may be corrected. [Citation.]' " (Sheena K., at p. 881.) We may nevertheless consider a facial challenge first raised on appeal when it presents a pure question of law capable of resolution " ' "without reference to the particular sentencing record developed in the trial court." ' " (Id. at pp. 884, 886, 887-889.)

## II. Analysis

### A. Warrantless Searches of Home/Electronic Devices

Ameen challenges the search condition on *Lent* and constitutional overbreadth grounds. We conclude he forfeited his right to assert these challenges by failing to raise them at sentencing. (Sheena K., *supra*, 40 Cal.4th at pp. 885, 887-888.) Indeed, not only did Ameen fail to object, but he affirmatively advised the court he had "reviewed all of the proposed terms and conditions with [his] attorney," and agreed to "accept probation on these terms and conditions." Accordingly, we decline to consider Ameen's challenges to this condition.

We are not persuaded by Ameen's contention that he preserved his challenge to the search condition by citing it as a basis to withdraw his guilty plea. He raised the issue in a different procedural context seeking different relief. And to the extent Ameen's earlier objection put the court on notice that he opposed the search condition, Ameen effectively withdrew that notice when he expressly advised the court at sentencing that he was willing to "accept probation" subject to the search condition.

Nor are we persuaded by Ameen's contention that any forfeiture was the result of ineffective representation by trial counsel inasmuch as "there can be no tactical reason in



this case why defense counsel would not want to raise this issue with the trial court." To the contrary, courts have rejected similar claims when "trial counsel had already negotiated an extremely favorable disposition" and "trial counsel could have reasonably concluded that the trial court would not have entertained an objection to [a] probation condition." (*People v. Kendrick* (2014) 226 Cal.App.4th 769, 779.) This rationale applies here, where Ameen received a favorable disposition—probation—in comparison to the seriousness of his offense, his presumptive ineligibility for probation, and his exposure to a potential five-year prison term.

As a "subset" of the search condition, Ameen contends the provision allowing searches of his electronic devices is unreasonable under *Lent* and unconstitutionally overbroad.<sup>4</sup> For the same reasons Ameen forfeited his right to challenge the search condition as a whole, he also forfeited his right to challenge this subset.

In addition, the exception to the forfeiture rule for facial challenges presenting pure questions of law does not apply because we cannot consider Ameen's challenge " 'without reference to the particular sentencing record developed in the trial court.' " (*Sheena K.*, *supra*, 40 Cal.4th at p. 882.) Indeed, Ameen admits as much by arguing "there is no arguable connection between the use of an electronic device and the crimes to which [he] pled guilty." This is an inherently factual inquiry we decline to address in the first instance.

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<sup>4</sup> As Ameen notes, challenges to similar conditions are pending before the California Supreme Court. (See, e.g., *In re Ricardo P.* (2015) 241 Cal.App.4th 676, rev. granted February 17, 2016, S230923; *People v. Trujillo* (2017) 15 Cal.App.5th 574, rev. granted Nov. 29, 2017, S244650.)



Although we decline to address the issue, it is unlikely we would reach a different conclusion were we to do so. This is because the record shows there is a direct connection between Ameen's use of electronic devices and the offense to which he pleaded guilty—he assaulted a peace officer with a deadly weapon after viewing social media posts and YouTube videos "encourag[ing] people to teach police a les[s]on." In this context, it would be difficult for Ameen to explain how a probation condition allowing searches of his electronic devices would be unreasonable or overbroad. Indeed, he made no reference in his briefing to his use of social media in connection with his assault conviction.

#### B. *Residence/Employment Approval*

Ameen challenges the residence/employment-approval condition on *Lent* and constitutional overbreadth grounds. We conclude he forfeited his right to assert these challenges by failing to raise them at sentencing. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 885, 887-888.)

Although Ameen asserts in his opening brief that his constitutional overbreadth challenge falls within the facial-challenge exception to the forfeiture rule, he admits in his reply brief that because "employment and residence approval is a common condition of probation [that] . . . may be justified in many cases," "some reference [to] the record may be necessary to determine the appropriateness of the condition" here. Because Ameen's challenge admittedly is not a true facial challenge, we decline to exercise our discretion to consider it.



In his reply brief, Ameen for the first time argues his challenge to the residence/employment-approval condition was preserved by his motion to withdraw his guilty plea and by his trial counsel's constitutionally defective performance. Ameen forfeited these arguments as to this probation condition because he did not raise them in his opening brief—he raised them only as to the search condition. (See *Santa Clara Waste Water Co. v. Allied World National Assurance Co.* (2017) 18 Cal.App.5th 881, 884, fn. 2.) Even if Ameen had properly raised the arguments as to this condition, they would fail for the same reasons they failed as to the search condition—the motion to withdraw the guilty plea arose in a different procedural context seeking different relief, and Ameen's trial counsel could have made a reasonable tactical decision not to jeopardize a favorable disposition by objecting to a probation condition that even Ameen acknowledges "is a common condition of probation [that] . . . may be justified in many cases."

### *C. No Negative Contact With Law Enforcement*

Ameen does not raise a *Lent* challenge to the condition prohibiting "negative contact w[ith] law enforcement"; he argues only that it is impermissibly vague because it "leaves [him] to speculate what he may and may not do in connection with law enforcement officers." For example, Ameen ponders whether the condition prohibits him from "complaining to the police department regarding inappropriate or illegal conduct by an officer," "participating in protests in the event of another police shooting where he wants to voice his concerns as a citizen," or "voic[ing] his disagreement and frustration to an officer writing a traffic ticket." These queries demonstrate Ameen's challenge to this



condition does not depend on the facts of his offense. Accordingly, the challenge falls within the exception to the forfeiture rule for purely facial challenges. (*Sheena K.*, *supra*, 40 Cal.4th at p. 887.) Even the Attorney General "agrees that the condition requires clarification."

Rather than clarify this condition on appeal in the first instance, we will remand with directions that the trial court clarify what conduct is regulated by the condition prohibiting "negative contact" with law enforcement.

#### DISPOSITION

The matter is remanded with directions that the trial court clarify what conduct is regulated by probation condition 14.b, which provides for "[n]o negative contact [with] law enforcement." In all other respects, the judgment is affirmed.

HALLER, J.

WE CONCUR:

HUFFMAN, Acting P. J.

O'ROURKE, J.